

FREDRES E. LAUBAUGH

IBLA 76-353

Decided April 5, 1976

Appeal from decision of Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-866-F.

Reversed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease may be reinstated where it appears that the lessee's failure to pay annual rental on time is due to the death of a member of the family in close proximity to the anniversary date of the lease.

APPEARANCES: Fredres E. Laubaugh, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Fredres E. Laubaugh appeals from the October 28, 1975, decision of the Utah State Office, Bureau of Land Management (BLM), denying her petition for reinstatement of oil and gas lease U-866-F. The lease had terminated by operation of law for her failure to pay the annual rental on or before the anniversary date of the lease, October 1, 1975. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). The payment was sent to the Utah State Office in an envelope postmarked October 5, 1975. The payment was received on October 7, 1975.

Appellant states that she informed the Utah State Office of the death of her brother-in-law. That office, however, denied appellant's petition for reinstatement stating, in effect, that appellant had not demonstrated with sufficient specificity that the death was a proximate cause of her failure to pay the annual rentals on time. Appellant's statement of reasons for appeal are much more detailed. She states that her brother-in-law died on September 20, 1975. She immediately went to the aid of her sister,

helping with housework, arrangements for the funeral, and consoling her sister. Appellant states that she actually moved in with her sister for the period from September 20 to October 2, 1975. When she returned home, she mailed the payment of annual rentals.

[1] The pertinent statutory and regulatory provisions, 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c), respectively, provide for the reinstatement of oil and gas leases which have terminated for failure to pay annual rental on time. Among other things, a lease may be reinstated if the failure to pay on time was either justifiable or not due to a lack of reasonable diligence. In defining "justifiable" we have stated:

It seems reasonably clear that Congress by the word "justifiable" was adverting to a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. This is thus a subjective test, dependent upon the factual milieu of the individual. We believe that cases which are so covered are those where the death or illness of the lessee or member of his close family, occurring [sic] with immediate proximity to the anniversary date, have been a causative factor in his failure to exercise reasonable diligence.

Louis Samuel, 8 IBLA 268, 274 (1972), appeal dismissed Civ. No. CV-74-1112-EC (C.D. Calif. 1975).

See also Kenneth F. Santor, 13 IBLA 208, 210 (1973), aff'd Santor v. Morton, 383 F. Supp. 1265 (D. Wyo. 1974). Appellant's case clearly comes within the boundaries of those principles. Her evidence is consistent and credible. Her lease should be reinstated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for action consistent with the opinions expressed herein.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

